

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JOSE E. HINOJOSA,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

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Civil Action No. C-08-141

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AND
DISMISSING HINOJOSA'S MOTION FOR RETURN OF PROPERTY**

On April 17, 2008, Plaintiff Jose E. Hinojosa filed a motion seeking the return of property in his criminal case, Cr. No. C-06-274. (D.E. 1.) The Court ordered that the motion be severed and a new civil case file be opened. (D.E. 2.) Pending before the Court is the Defendant's Motion to Dismiss Hinojosa's Motion for Return of Property. (D.E.17.) Hinojosa's response to this motion was due not later than October 30, 2008. (See D.E. 16 (briefing order).) Hinojosa never filed a response. On December 5, 2008, the Court held a hearing in the case. The United States was represented by AUSA Lawrence Ludka, and Mr. Hinojosa appeared *pro se*.

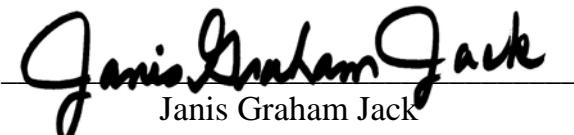
At the hearing, the Court heard testimony from Armando Cavada, Hinojosa's former counsel in his underlying criminal case. This testimony, along with the documents attached to the United States' Motion to Dismiss, make clear that the United States is no longer in possession of any of the property or money that Hinojosa seeks. Cavada testified that the United States had returned to him Hinojosa's property, and confirmed that the property returned consisted of all of the items listed in Hinojosa's motion. He stated that he thought he had returned all of that property, except the money, to Hinojosa's brother. He testified, though, that after speaking with Hinojosa on the day of the hearing, he now realized it was possible that perhaps he was mistaken and he had not actually met

with Hinojosa's brother. Cavada had moved since receiving the property and thought that perhaps the property was in storage. He assured the Court that he would search for Hinojosa's property and return it promptly.

With regard to the money, Mr. Cavada confirmed that all but \$980 had been forfeited in an agreed judgment out of Kleberg County. (See D.E. 17, Exhibit C.) The remaining \$980 was returned to Cavada. Cavada testified that he returned \$230 of that money to Hinojosa by depositing it into Hinojosa's prison account while Hinojosa was incarcerated in Falfurrias. Cavada also testified that he repeatedly attempted to send a money order for the remaining \$750 to Hinojosa, but that the Bureau of Prisons returned the money order each time. According to Cavada, he has since mailed the \$750 money order to Hinojosa's newly-appointed appellate attorney.

The Court makes no findings herein as to whether or not Hinojosa may have a cause of action against Cavada for any failure to promptly return Hinojosa's property or money. Nonetheless, it is clear from both Cavada's testimony at the hearing and the documents submitted by the United States in support of its Motion to Dismiss that the United States is no longer in possession of any of the items or money sought by Hinojosa. Accordingly, the United States' Motion to Dismiss (D.E. 17) is GRANTED and Hinojosa's motion for return of property (D.E. 1) is hereby DISMISSED.

It is ORDERED this 5th day of December, 2008.



Janis Graham Jack
United States District Judge